Commandant Central Ordnance Vs. Collector of Customs

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Court : Customs Excise and Service Tax Appellate Tribunal CESTAT Delhi

Decided On : Sep-25-1990

Reported in : (1991)LC113Tri(Delhi)

Appellant : Commandant Central Ordnance

Respondent : Collector of Customs

Judgement :
1. The Commandant, Central Ordnance Depot, Post Box No. 20, Jabalpur (MP) has filed an appeal being aggrieved from the order passed by the Collector of Customs (Appeals), Bombay. In Column No. 3, of the Appeal Memo, the date of communication has been mentioned as 29-02-1984. The said appeal was received in the Registry on the 10th day of September 1984. In terms of provisions of Sub-section (3) of Section 129A of the Customs Act, an appeal has to be filed within 3 months from the date of communication of the order, and as such the appeal had to be filed on or before 29-05-1984. Thus, there is a delay of 103 days. The appellant has also filed an application for condonation of delay. Capt. R.K.S.Yadav has appeared on behalf of the appellant, he has reiterated the contentions made in the application for condonation of delay. Capt.

Yadav has pleaded that the appellant was prevented by sufficient cause in the late filing of the appeal and the delay may be condoned.

2. Shri M.K. Sohal, Ld. JDR, has appeared on behalf of the respondent, has opposed the condonation of delay and has pleaded that delay has occurred due to

the negligence on the part of the appellant in the late filing of the appeal.

3. We have heard both the sides and have gone through the facts and circumstances of the case. Relevant extract from the application for condonation of delay is reproduced below :- (a) The Collector of Customs Bombay has rejected the case and order passed vide their No. S/49-813/83/CL dated 29 Feb. 84.

(b) The order in original alongwith connected papers was forwarded to this depot by Emb HQ Bombay vide their letter No. 1557/S/MRC-258-82/Ord/Appl/CD(S-4) dated 3 May 84.

(c) In the past all the cases regarding the appeals to the Appellate Tribunals were dealt by Embarkation Headquarters. Ministry of Defence has now issued the ruling regarding the appeals to the Appellate Tribunals are required to be dealt with by the consignee depots to the effected Tribunals, hence this is the first case to the immediate course of action.

(d) The appeal forms and rulings/details of guidelines/instructions have also not been available with us.

(e) In this position an officer was detailed on temporary duty to Delhi to seek advice/details regarding the case from Registrar Appellate Tribunal New Delhi. On their advice direction our officer purchased the Cen-Cus Appellate Tribunal Guide from Jain Book Agency, New Delhi.

(f) No books/publications regarding how to file the cases are available in the Jabalpur market.

3. In view of the facts mentioned above the appeal delayed may kindly be condoned at your end.

4. Your unsigned letter bearing F. No. CD(SB)A. No. 1102/84-B dated 1 Feb 85 is returned herewith for signature and requested to return the same through our courier.

The Hon'ble Supreme Court in the case of C.C.E. v. Tata Yodogawa, reported in 1988 (38) ELT 739, have held that inter-departmental communication will not reconsidered as sufficient cause in the late filing of appeal. Para No. 4 from the said judgment is reproduced below :- "Para. 4 - From 26-12-1986 to 10-02-1987 and from 6-3-87 to 24-3-87 there is no cogent and possible explanation. It may be mentioned that the special leave petition was actually filed on 23-3-1987.

There is no whisper to explain what "legal problems in filing the Special leave petition arose" it appears to us that no attempt has been made to explain this delay. In that view of the matter we gave further opportunity to the petitioners to file additional affidavit explaining the cause, if any, for this delay. It is further stated in the rejoinder affidavit to the counter affidavit on behalf of the Respondents that "such delay is always beyond the control of especially in Government matters as the file has to be routed through several Sections of the Government". We are aware of the fact that the Government being impersonal takes longer time than the private Bodies or the individuals. Even giving that latitude there must be some way or attempt to explain the cause for such delay. As stated from the facts narrated hereinbefore there is no sufficient cause to explain the delay. Hence, the application for condonation of delay is dismissed." The Hon'ble Supreme Court in the case of Ram Lal and Ors. v. Rewa Coal-fields, reported in AIR 1962 SC 361 have held that after the expiry of the limitation, the Respondent acquires substantial rights and the appellant has to explain each and every day's delay. In the matter before us the appellant is a department of Govt. of India.State of West Bengal v. The Administrator, Howrah Municipality and Ors. etc., reported in AIR 1972 SC 749 had held that the mere fact that the appellant is a Government department, cannot be given a su-perior footing. Para No. 27 from the said judgment is reproduced below :- "Para. 27 - Mr. D. Mukherji learned counsel for the first respondent, is cer-tainly well-found in his contention that the expression 'sufficient cause' can-not be construed too liberally, merely because the party in default is the Government. It is no doubt true that whether it is a Government or a private party, the provisions of law applicable are the same, unless the statute itself makes any distinction. But it cannot also be gainsaid that the same consideration that will be shown by courts to a private party when he claims the protection of S. 5 of the Limitation Act should also be available to the State".

4. In view of these observations, we are of the view that the appellant was not prevented by sufficient cause in the late filing of the appeal.

The appellant's application for Condonation of Delay is rejected.

5. Since we have rejected the prayer of the appellant for condonation of delay, the appeal is dismissed being hit by limitation, and we are not going into the merits of the same.